Tay Chung Chaw & Anor v Public Prosecutor and another appeal

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NOS W-05–64–03 OF 2012 AND W-05–65–03 OF 2012
AZAHAR MOHAMED, MOHTARUDIN BAKI AND HAMID SULTAN JJCA
27 DECEMBER 2013

Criminal Law — Dangerous drugs — Trafficking — Accused persons charged under s 39B(1)(a) of the Dangerous Drugs Act 1952 — Conviction of drug trafficking — Accused persons sentenced to death — Appeal against decision of the High Court — Whether there were contradictions in evidence of prosecution — Whether there was gap in prosecution case — Whether convictions safe

Evidence — Exhibit — Break in chain of evidence — Difference in weight of drugs — Whether identity of exhibits affected — Whether detrimental to prosecution case — Evidence Act 1950 s 105

The appellants were charged for the offence of common intention of trafficking in dangerous drugs, which was in contravention with s 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). Acting upon information that certain drug activities would take place at Mid Valley Megamall, the police arrested the appellants. A police officer ('SP4') saw the second appellant handing over a bag, suspected to contain drugs, to the first appellant. The bag was seized and 1,570g of methamphetamine was discovered to be in it. The prosecution had relied on the statutory presumption and at the conclusion of the trial, the High Court convicted the appellants and sentenced them to death. In the present appeals, the appellants contended, inter alia, that there a break in the chain of evidence which affected the identity of the exhibits; and that there was difference in weight of drugs which was not explained by the prosecution.

Held, dismissing the appeals:

(1) On the issue of difference in weight of drugs, the court was of the opinion that methodologically and/or jurisprudentially it could not be taken for the first time at the appellate stage. Under s 2 of the DDA, weight of drugs was not an element to sustain a charge of trafficking. Secondly, it was well established that once the defence for trafficking had been called, the legal burden to rebut trafficking on the balance of probabilities would fall on the accused (see para 20).

(2) Section 105 of the Evidence Act 1950 would not in any way whittle down

the overall burden of the prosecution at end of the defence case to prove its case beyond reasonable doubt for any offence. If the accused had challenged the chain of evidence or difference in weight at the prosecution stage and in addition, assert that it was not the drugs seized or no drugs were seized, and/or no plausible explanation for difference in weight was forthcoming from the prosecution, then a window of opportunity would be opened to the accused if the court were to find, at the end of the defence case, the difference in weight issue had created a reasonable doubt in its mind to conclude that the prosecution had not proven the case beyond reasonable doubt notwithstanding the fact that the accused might not have rebutted trafficking on the balance of probabilities (see para 22).

(3) It was well-settled that it was in the hands of triers of facts to assess the quality of evidence and to determine whether the evidence on record justifies a conviction as well as sentence. In this case, there was sufficient material to support the charge and the view taken by the trial court was a reasonable view of the evidence on record, and the court had rightly applied the maximum evaluation and beyond reasonable doubt test (see para 25).

[Bahasa Malaysia summary

Perayu-perayu didakwa untuk kesalahan niat bersama mengedar dadah berbahaya, yang mana adalah bertentangan dengan s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Bertindak atas maklumat bahawa aktiviti dadah tertentu akan berlaku di Megamall Mid Valley, polis menangkap perayu-perayu. Pegawai polis ('SP4') melihat perayu kedua menyerahkan beg, yang disyaki mengandungi dadah, kepada perayu pertama. Beg dirampas dan 1,570g dadah methamphetamine dijumpai di dalamnya. Pihak pendakwaan bergantung ke atas anggapan statutori dan pada kesimpulan perbicaraan, Mahkamah Tinggi menyabit perayu-perayu dan menjatuhkan mereka dengan hukuman mati. Dalam rayuan-rayuan ini, perayu-perayu berhujah, antara lain, bahawa terdapat jurang dalam rantaian keterangan yang menjejaskan identiti ekshibit-ekshibit; dan bahawa terdapat perbezaan dalam berat dadah yang tidak dijelaskan oleh pihak pendakwaan.

Diputuskan, menolak rayuan-rayuan:

(1) Atas isu perbezaan dalam berat dadah, mahkamah berpendapat bahawa secara methodologi dan/atau jurisprudens ia tidak boleh diambil untuk pertama kali di peringkat rayuan. Di bawah s 2 ADB, berat dadah bukan unsur untuk mengekalkan tuduhan pengedaran. Keduanya, adalah nyata bahawa apabila pembelaan untuk pengedaran dipanggil, beban undang-undang untuk mematahkan pengedaran atas imbangan kebarangkalian akan terjatuh ke atas tertuduh (lihat perenggan 20).

(2) Seksyen 105 Akta Keterangan 1950 tidak akan dalam apa-apa cara mengurangkan beban keseluruhan pihak pendakwaan pada akhir kes pembelaan untuk membuktikan kes melampaui keraguan munasabah untuk apa-apa kesalahan. Jika tertuduh mencabar rantaian keterangan atau perbezaan berat di peringkat pendakwaan dan selanjutnya, mendesak bahawa bukan dadah yang dirampas atau tiada dadah dirampas, dan/atau tiada penjelasan munasabah untuk perbezaan dalam berat diberikan oleh pihak pendakwaan, dengan itu peluang akan terbuka kepada tertuduh jika mahkamah mendapati, pada akhir kes pembelaan, isu perbezaan dalam berat telah membentuk keraguan munasabah dalam mindanya untuk menyimpulkan bahawa pihak pendakwaan tidak membuktikan kes melampaui keraguan munasabah meskipun fakta bahawa tertuduh tidak mematahkan pengedaran atas imbangan kebarangkalian (lihat perenggan 22).

(3) Adalah nyata bahawa adalah hak pembicara fakta untuk menilai kualiti keterangan dan untuk menentukan sama ada keterangan atas rekod menjustifikasikan sabitan dan juga hukuman. Dalam kes ini, terdapat material yang mencukupi untuk menyokong tuduhan dan pandangan yang diambil oleh mahkamah perbicaraan adalah pandangan munasabah terhadap keterangan atas rekod, dan mahkamah telah secara betul mengguna pakai penilaian maksimum dan ujian melampaui keraguan munasabah (lihat perenggan 25).]

Notes

For cases on break in chain of evidence, see 7(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 1698–1715.

For cases on trafficking, see 4(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 205–300.

Cases referred to

Malik Ismathbatcha Malik & Anor v PP and another appeal [2014] 2 MLJ 542; [2013] AMEJ 0207, CA (refd)

Mohamad Radhi bin Yaakob v PP [1991] 3 MLJ 169, SC (refd)

Muhammed bin Hassan v PP [1998] 2 MLJ 273, FC (refd)

Munuswamy Sundar Raj v PP [2013] 5 MLJ 48, CA (refd)

Natcha Dabkaew v PP (K-05–177–07 of 2012) (unreported) (refd)

Phiri Mailesi (Zambian) v PP [2013] 5 MLJ 780, CA (refd)

Phrueksa Taemchin (Thailand) v PP [2013] 6 MLJ 808; [2013] 5 AMR 338, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 s 60

Dangerous Drugs Act 1952 ss 2, 37(d), (da), (xviii)

Evidence Act 1950 ss 9, 101, 102, 105

Penal Code s 34

Appeal from: Suit No 45–19 of 2010 (High Court, Kuala Lumpur)

Datuk N Sivanathan (Tina Ong with him) (Sivanathan) for the first appellant.
Geethan Ram Vincent (Afifuddin bin Ahmad Hafifi with him) (Salehuddin Saidin & Assoc) for the second appellant.
Samihah bt Rhazali (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Hamid Sultan JCA (delivering judgment of the court):

[1] This is our judgment in respect of two appeals relating to a charge where both the appellants were convicted and sentenced to death for trafficking.

[2] The appeals came up for hearing on 27 September 2013 and upon hearing, we dismissed the appeals on the same day. My learned brothers Azahar bin Mohamed JCA and Mohtarudin bin Baki JCA have read the draft judgment and approved the same. This is our judgment.

[3] The first appellant (the first accused) Tay Chung Chaw's, Appeal No is W-05–64–03 of 2012 and the second appellant (the second accused) Habib Shayan Saadi's — Iranian, Appeal No is W-05–65–03 of 2012. Both the appellants' the learned counsel have filed comprehensive submissions in respect of law and facts even though they have limited their submissions, inter alia, to break in chain of evidence, discrepancy in weight, issues relating to overt act, double presumption and failure to consider the defence case fairly. We do not propose to repeat the submissions save to deal with the relevant issues.

[4] The charge against both the appellants reads as follows:

> Bahawa kamu pada 19hb Oktober 2009 jam Iebih kurang 3.50 petang di Ground Floor Utara, berhadapan kedai pakaian sukan jenama Adidas (Lot G–025 dan G–027) Mid Valley Megamall, di dalam Daerah Brickfields, di dalam Wilayah Persekutuan Kuala Lumpur, di dalam meneruskan niat bersama, telah mengedar dadah berbahaya iaitu 895 gram Methamphetamine. Oleh yang demikian kamu telah melakukan satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah s 39B(2) Akta yang sama dibaca bersama s 34 Kanun Keseksaan.

[5] The first appellant's petition of appeal can be summarised as follows:

(a) There was a break in the chain of evidence which affected the identity of the exhibits. There was a 12 hours gap between the time the exhibits were seized up to the time the exhibits were handed over to SP6 which was unexplained;

(b) The oral evidence of SP4 contradicted the prosecution's documentary evidence in exh P17 on the existence of another plastic bag marked as A4;

(c) The difference in weight was never explained by the prosecution;

(d) The CCTV recording of the scene of crime was not tendered in court thus the doctrine of adverse inference applies; and

(e) Peyman was an active participant in the crime and there was evidence that such person was present at the scene.

[6] The second appellant's petition of appeal can be summarised as follows:

(a) There was no evidence of continuous custody of the exhibits from the scene of crime to the Brickfields IPD to the KL IPD to the second appellant's house and back to the KL IPD. The safekeeping of the exhibits was therefore compromised and might lead to tampering. This shows that there was a break in the chain of evidence;

(b) The first contention was further strengthened by the difference in weight as weighed by SP4 and the chemist;

(c) Failure to produce the CCTV footage called for adverse inference;

(d) The explanation by SP4 that the marking A4 was a typo error was an afterthought and contradicted s 9 of the Evidence Act 1950;

(e) The existence of Peyman at the scene was proven vide the defence witnesses. It was consistent with the defence version of what had occurred;

(f) The police did not conduct any investigation as to the fingerprint, finger nail clippings, DNA nor hand swab on the appellant and the seized exhibits.

[7] The learned trial judge had written a judgment consisting of 48 pages, clearly identifying the facts, law and giving reasons to show that the defence had not successfully rebutted the charge of trafficking.

BRIEF FACTS

[8] The police upon information of drug activities went to Mid Valley, Megamall and arrested two persons namely the first and second appellants suspected of drug trafficking. Police officer SP4 saw the second appellant handing over a bag, suspected to contain drugs, to the first appellant. Subsequently, SP4 identified himself as a police officer and the second appellant ran away but the first appellant was arrested at the spot. The second appellant attempted to hide in a sport shop in the Mall but was arrested. SP4 seized the bag and found drugs (methamphethamine) marked as P10 and P11

where the gross weight was stated to be 1,570g, and the nett weight of 895g. The prosecution had relied on the statutory presumption to drive home the charge.

The first appellant

[9] The learned counsel for the first appellant's submission can be summarised as follows:

(a) there was a break in chain of exhibits and the exhibits were only handed over to the investigating officer after 12 hours;

(b) there were contradictions to the statements relating to the exhibits;

(c) there was difference in gross weight as the chemist had said it was 1270.05g, and the prosecution had failed to explain;

(d) there was confusion in the marking of exhibits;

(e) wrong to find there was an 'overt act', as the first and second appellants were caught immediately and they did not attempt to escape at all;

(f) the court failed to see the appellant was only having mere passive physical possession;

(g) non-production of CCTV recording in the Mall was fatal to the prosecution case.

[10] The first appellant's defence has been summarised by the learned counsel as follows:

1. Briefly, the defence tendered by the first appellant (SD1) in Court, which was corroborated by the evidence of SD2 (the second appellant) and SD3, Seet Chee Yong (Steven) was as follows:
    a) The first appellant and his friend, Seet Chee Yong also known as Steven (SD3) went to Midvalley Megamall because SD1 wanted to change Malaysian Ringgit into Yuan from a moneychanger who was known to SD3. SD3 had recommended Peyman (moneychanger) who had an office at the second floor of the mall.
    b) SD1 had passed the money to SD3 and proceeded to wait in between the shop selling 'Girls' branded goods and the Adidas shop.
    c) SD1 and SD2 said that Peyman was carrying the brown paper bag whereas SD3 stated that he did not notice the paper bag but was sure that SD2 was not carrying anything with him.
2. SD2 upon being arrested told the police about Peyman's description, height, clothes he was wearing and the particulars of the vehicle he was driving including the registration number which then enabled the police to identify and arrest Peyman. SD2 also had informed the police that the brown paper

bag exhibit P8 actually belonged to Peyman. Upon the search on the condo of SD2 and Peyman, the police later found drugs. They were then charged for trafficking at the Kuala Lumpur High Court for the drugs fround in the condo and were acquitted and discharged. Peyman is now in Iran.

3. During SD1's (first appellant's) cross-examination, he had maintained his defence that the paper bag was not his in the first place and that it belonged to Peyman whom he could identify and describe to the Court.

[11] The court in reliance of s 34 of the Penal Code found that both the accused knew that the bag contained prohibited drugs and both were presumed to be trafficking pursuant to s 37(da)(xviii) of the Dangerous Drugs Act 1952 (DDA 1952).

The second appellant

[12] The second appellant's defence which has nexus to the first appellant's defence has been summarised by the learned counsel and reads as follows:

1. On the day of the incident the second appellant had gone to see a person by the name of Peyman Bahrom Saleyman Pour ('Peyman'), an Iranian. The second appellant met Peyman and was told that Peyman wanted to meet one of his friends in Midvalley.

2. The second appellant followed Peyman to Midvalley in Peyman's car. The second appellant noticed that Peyman carried a paper bag with him whilst the second appellant did not carry anything with him.

3. At Midvalley, the second appellant and Peyman went to McDonalds to have a drink and whilst having a drink Peyman received a call. Peyman informed the second appellant that he had to go and see his friend. Peyman asked the second appellant to go shopping whilst waiting for him.

4. The second appellant was arrested by Police when he was in front of the Adidas shop.

5. The second appellant was asked what was in the paper bag and he informed the police that he did not know and that the paper bag belonged to Peyman.

[13] The learned counsel for the second appellant's complaints are similar to that of the first appellant.

[14] It was also contended that it was unclear whether the learned trial judge had relied on ss 37(d) or 37(da) of the DDA 1952 attracting the jurisprudence relating to double presumption (see *Muhammed bin Hassan v Public Prosecutor*

[1998] 2 MLJ 273).

The respondent's submission

[15] The learned deputy public prosecutor contended (i) no break in chain; (ii) difference in weight was explained; (iii) 12 hours delay issue was not challenged; (iv) the drugs were all properly identified and marked as exhibits.

[16] After having given much consideration to the written and oral submissions of the parties, inclusive of the petitions of appeal and perusing the appeal records in extensor, we are of the considered view that it is a safe decision and appellate interference is not warranted. Our reasons, inter alia, are as follows:

> In the instant case PW4's evidence was accepted by the trial judge and that is one of finding of facts. The subsequent events were consistent and there was no material challenge on any of the issues raised before us at the trial stage, save for the fact that the defence version was not properly considered by the trial judge.

[17] In essence, the prosecution case at the prosecution stage was straight forward from the primary facts. The appellants were found in actual possession of drugs at the prosecution stage and the quantity was such as to attract s 2 of the DDA 1952 to sustain a charge of trafficking. On such facts whether the trial court has relied on ss 2 or 37(da) or 37(d) is immaterial. The jurisprudence, relating to custody, control, possession, knowledge, ss 2, 37(d) and 37(da) inclusive of double presumption has been dealt extensively in the case of *Phrueksa Taemchin (Thailand) v Public Prosecutor* [2013] 6 MLJ 808; [2013] 5 AMR 338. We do not wish to repeat save to say that the Court of Appeal through Hamid Sultan bin Abu Backer JCA had this to say:

> [43] As we have said earlier ss 37(d) or 37(da) comes into force by operation of law with a caveat that s 37(da) cannot be sustained if s 37(d) necessarily have to be used to supplement the ingredient of knowledge ie rule against double presumption. It does not matter on issues of law what the trial judge says about ss 2 or 37(d) or 37(da) if there is overwhelming evidence of trafficking according to law, the appellate court is at liberty to apply s 60 of the Courts of Judicature Act 1964 if the law requires a conviction. The application of 37(d) or 37(da) only imposes the accused to speak of his innocence to earn a conviction for possession or obtain an acquittal. Nothing more.

[18] The learned trial judge on the issue of trafficking had this to say:

> The court was of the view that going by what were said in the three cited cases of *Chia Leong Foo*, *Hairul Din bin Zainal Abidin* and *Ong Ah Chuan* that there must be an overt act on the part of the accused which went beyond mere passive possession,

A then the facts of the instant case clearly evidenced the act of running away from crime scene went beyond mere passive possession by the second accused. Not only that, there was definitely a clear transfer possession of the drugs from the second accused to the first accused. Once it was proven that the prerequisite element of possession had been established, then the act as envisaged in s 2 of the DDA 1952 such as carrying dangerous drugs to wit methamphetamine constitutes trafficking. In this instant, both the accused were in possession and found to be carrying dangerous drugs within the meaning of trafficking in the Act. Based on the above facts, the Court finds that the first and second accused had custody, control and possession of the brown paper bag and the drugs contained therein. The evidence of SP4 and SP5 respectively clearly established that the brown paper bag exh P8 which contained the drugs was being carried by the first accused and to be transferred to the second accused. Hence both the accused had physical custody and control of the incriminating drugs and were caught red handed by SP4 and SP5 respectively.

Even without the aid of the presumption in s 37(da) of the DDA 1952, there was ample evidence to show that not only did first accused and second accused have physical custody, control and possession of the brown paper bag containing the drugs, both equally have knowledge by virtue of the overt act of the second accused running away after been introduced by SP4 as a police officer. The accused must have known the contents in the brown paper bag at the time of their arrest as the brown paper bag was not sealed or covered and it did not require much effort to uncover the contents in exh P8 were drugs. Hence it could not be farfetched for the court to infer that both the accused had all the time to see and ascertain the contents of exh P8 were drugs. To my mind the cumulative conduct of the second accused carrying the brown paper bag and the attempt to escape and the condition of the brown paper bag not being sealed, covered and easily opened led to the irresistible of knowledge. Hence the prosecution has established a strong prima facie case of actual possession.

[19] The learned trial judge had also considered the defence version from pp 32–37 of the judgment. The learned judge found that it was not a plausible explanation to rebut the charge of trafficking. The learned judge explains this in p 49 as follows:

> The Court found that the defence did not put across to the prosecution witnesses in particular SP4 and SP5 the version as mentioned in the evidence of SD1, SD2 and SD3 respectively. It is trite law that failure to put across the defence case during the prosecution case could be fatal to the defence.

In *Malik Ismathbatcha Malik & Anor v Public Prosecutor and another appeal* [2014] 2 MLJ 542; [2013] AMEJ 0207 the Court of Appeal through Hamid Sultan bin Abu Backer JCA on the issue of plausible explanation had this to say:

> [20] It is trite that the moment an accused has given sufficient 'Alcontara Notice' the burden is placed on the prosecution to rebut the same satisfactorily and the trial judge is required to consider whether the prosecution has rebutted the same and in addition consider whether the evidence of the accused is a 'plausible explanation' to rebut the charge of trafficking and whether the story of the accused if not inherently

incredible and when tested with the prosecution case creates a reasonable doubt in the mind of the appellant as stated in a number of cases in composite, (see *Alcontara a/l Ambrose Anthony v Public Prosecutor* [1996] 1 MLJ 209; *Munuswamy Sundar Raj v Public Prosecutor* [2013] 5 MLJ 48; *Public Prosecutor v Nor Azman bin Abidin* (P-05–21–01 of 2012 and P-05–27–02 of 2012).

[20] On the issue of 'difference in weight' of drugs, we must say that methodologically and/or jurisprudentially it cannot be taken for the first time at the appellate stage, (see *Natcha Dabkaew v Public Prosecutor* (K-05–177–07 of 2012)). This is so, inter alia, for two reasons. One under s 2 of the DDA 1952 weight of drugs is not an element to sustain a charge of trafficking. Secondly, it is well established that once the defence for trafficking is called the legal burden to rebut trafficking on the balance of probabilities falls on the accused. This proposition is consistent with a number of case laws as well (see *Phrueksa Taemchin (Thailand) v Public Prosecutor* [2013] 6 MLJ 808; [2013] 5 AMR 338; *Munuswamy Sundar Raj v Public Prosecutor* [2013] 5 MLJ 48; *Phiri Mailesi (Zambian) v Public Prosecutor* [2013] 5 MLJ 780).

[21] Support for the proposition is also found in s 105 of the EA 1950 and must be read with ss 101 and 102 of the EA 1950.

Section 105 of EA 1950

Burden of proving that case of accused comes within exceptions

105 When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of those circumstances.

Section 101 EA 1950

101(1) Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 102 EA 1950

102 The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

[22] It must also be stated that s 105 does not in any way whittle down the overall burden of the prosecution at end of the defence case to prove its case beyond reasonable doubt for any offence. If the accused had challenged the

chain of evidence or difference in weight at the prosecution stage and in addition assert that it was not the drugs seized or no drugs were seized, and/or no plausible explanation for difference in weight was forthcoming from the prosecution then a window of opportunity is opened to the accused if the court finds at the end of the defence case the 'difference in weight' issue has created a reasonable doubt in its mind to conclude that the prosecution has not proven the case beyond reasonable doubt notwithstanding the fact that the accused may not have rebutted trafficking on the balance of probabilities. Even if the trial court has failed to act, the accused can reagitate the issue again in the appellate court and the Court of Appeal pursuant to s 60 of the CJA 1964 has power to consider the issue and make suitable orders inclusive of setting aside the conviction and sentence.

[23] Learned author of *Janab's Key to Criminal Procedure and Evidence*, (2nd Ed), at pp 960 and 961 on s 105 has this to say:

> … It is the cardinal principle of criminal law that every accused person is presumed to be innocent until his guilt is established. This section is an important qualification to the general rule that in criminal trial, the burden of proving everything essential to the establishment of the charge against the accused lies upon the prosecution.
>
> … The Full Bench of the Allahabad High Court has held in *Prabho v Emperor* lLR 1941 843 that the Indian law is also the same as laid down in *Woolmington*'s case. The burden of proving any exception as to liability is thrown on the accused by section 105. However, it does not relieve the prosecution of its burden to establish the guilt beyond doubt. That burden is never shifted. The view of the Allahabad High Court has been reaffirmed by the Supreme Court in *Dayabhi v State of Gujarat* AIR 1964 SC 1563.
>
> The burden of proof on the accused is of a special nature. The standard of proof in a case is different from that of the prosecution. In the case of the prosecution, it is of a higher standard, namely, proof beyond doubt. But the accused need not prove his case beyond doubt. Even if the accused is unable to establish his innocence clearly, still the evidence placed before the court may raise some doubt in the mind of the court as regards one or more of the ingredients of the offence charged, including mens rea of the accused person and in that the case the court would be entitled to acquit the accused on the ground that the general burden of proof vested on the prosecution has not been discharged.

[24] On the issue of break in chain of evidence, difference in weight, etc; we are satisfied that there was no merit to warrant an acquittal (see *Natcha Dabkaew v Public Prosecutor* (K-05–177–07 of 2012)).

[25] It is well settled that it is in the hands of triers of facts to assess the quality of evidence and to determine whether the evidence on record justifies a conviction as well as sentence. We have perused the evidence in detail and are

satisfied that there is sufficient material to support the charge and the view taken by the trial court on the relevant issues in our view was a reasonable view of the evidence on record, and the court had followed *Radhi*'s direction and rightly applied the maximum evaluation and beyond reasonable doubt test.

[26] We are of the considered view it is a safe decision and appellate intervention is not warranted and the appeals have no merit. Accordingly we dismiss the appeals.

We hereby order so.

Appeals dismissed.

Reported by Afiq Mohamad Noor